

IN THE HIGH COURT OF JUDICATURE AT PATNA

MA No.474 of 2005

NITYA NAND KUMAR, S/o. late Sukhdeo Kumar,
r/o. village- Bhatta Bazar, Purnia,
P.S, Khazanchihat, Distt. Purnia.

----- Appellant.

Versus

1. KRISHNA DEO MANDAL, S/o. Parsadi Mandal,
2. Bhagwati Devi W/o. Parsadi Mandal,
Both r/o. village- Kamalpur, P.O. Madarichak, P.S.Manihari,
District- Katihar at present resident of Girja Colony, Quarter
No.429/F, P.S. & Distt. Katihar.

----- Respondents Ist party.

3. The National Insurance Company, Katihar Branch, P.S. &
Distt. Katihar.
4. The Oriental Insurance Company Katihar Branch, pP.S. &
Distt. Katihar.
5. The Oriental Insurance Company Purnia Branch, Bhatta
Bazar, P.S. Khazanchi hat, Distt. Purnia.

----- Respondents 2nd Party.

Counsel for the Appellant:-Mr. Madhav Roy, ----- Advocate.

Mr. Rajesh Kumar Mishra -----Advocate.

Counsel for the Claimant:- Mr. Bimal Kumar, ----- Advocate.

(Respondent No.1 & 2) Mr. Birendra Kumar ---. Advocate.

(Respondent No.3) Mr. Arun Kumar Singh -----Advocate.

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02.12.2008

At the consent of the parties this appeal is being

finally heard under Order 41 Rule-11 C.P.C.

L.C.R. has been received in this case.

The appellant Nityanand Kumar, the owner of Bus
No.BEK/9255 has preferred this appeal against the Award
dated 8th July, 2005 of the Motor Vehicle Accident Claims
Tribunal-cum-Addl. District Judge-III, Katihar in Claim Case
No.21 of 1994, whereby a compensation of Rs.62,500/- with

interest @ 9% from 16.02.2004 and @ 15% from two months after the award if the amount of compensation is not paid to the claimants within the period.

The claimants' case was that the deceased Dinesh Prasad Mandal was traveling in Bus No.BRK/4797 named as Durga Bus and when the bus came near Mahiyarpur Chowk one another bus named, Kumar Bus was coming from Manihari and it dashed against the Bus as a result of which the Bus (4797) overturned by the side of the road and some passengers including the deceased received injuries and that the deceased died due to the injuries and his dead-body was taken out of the Bus. The claimants stated that the deceased was earning a monthly income of Rs.2,000/- and compensation of Rs.5,00,000/- was claimed. Manihari P.S. Case No.50 of 1994 under Sections 279, 337, 338 & 304A of the I.P.C. was stated to have been lodged in connection with the accident.

At the very outset it is relevant to mention here that at initial stage, the case was referred to the Lok Adalat, where National Insurance Company and Oriental Insurance Company had appeared and an award of Rs.1,25,000/- was passed by the

Lok Adalat at the consent of the parties wherein National Insurance Company (Respondent No.3) and Oriental Insurance Company (Respondent No.4) had agreed to pay Rs.62,500/- each as compensation to the claimants. The Oriental Insurance Company paid its share of Rs.62,500/- to the claimants but the National Insurance Company (Respondent No.4) did not pay its share of Rs.62,500/- on the ground that he had not been made a party in the claim case. Thereafter, the claimants approached the Claims Tribunal which had passed the order and then vide its order dated 05.04.2000 the Claims Tribunal ordered the Respondent No.4, the Oriental Insurance Company itself to pay the remaining Rs.62,500/- to the claimants. This order was objected to by the Oriental Insurance Company (Respondent No.4) which challenged the order under C.W.J.C. No. 2996 of 2003. The C.W.J.C. was allowed vide order dated 15.09.2003 with a direction to the Claims Tribunal to proceed with de-novo trial of the original Claim Case No.21 of 1994 and to decide the dispute as raised by the respondent No.4, the Oriental Insurance Company.

It was after the direction as passed in the said C.W.J.C. case, that the Claim Case No.21 of 1994 was tried.

As many as four witnesses were examined by the claimants and the O.Ps. also examined two witnesses. A.W.1 Kailash Bihari Upadhyay and A.W.2 Ramchandra Yadav were examined as eyewitnesses to the occurrence. A.W.3 Md. Minhajuddin was a witness who was traveling in the same Bus with the deceased and he had also received injuries and the said P.S. Case was instituted on his statement and thus he was the informant of that police case. A.W.4 Krishnadeo Mandal was one of the two claimants.

O.W.1 Nityanand Kumar was the owner of Bus No.9255 and he also happens to be the appellant here. O.W.2 (wrongly numbered as O.W.1) Abdhesh Kumar an Officer of Oriental Insurance Company was examined on behalf that Insurance Company for testifying about the case of the Insurance Company that Bus No.BEK/9255 had not been insured by his company.

On conclusion of the trial the learned Claims Tribunal came to the conclusion that the Bus No.9255 was involved in the accident. The Claims Tribunal also came to find that this Bus was not insured by the Oriental Insurance Company and, therefore, the appellant Nityanand, the owner

of the bus was directed under its award to pay compensation of Rs.62,500/- to the claimants.

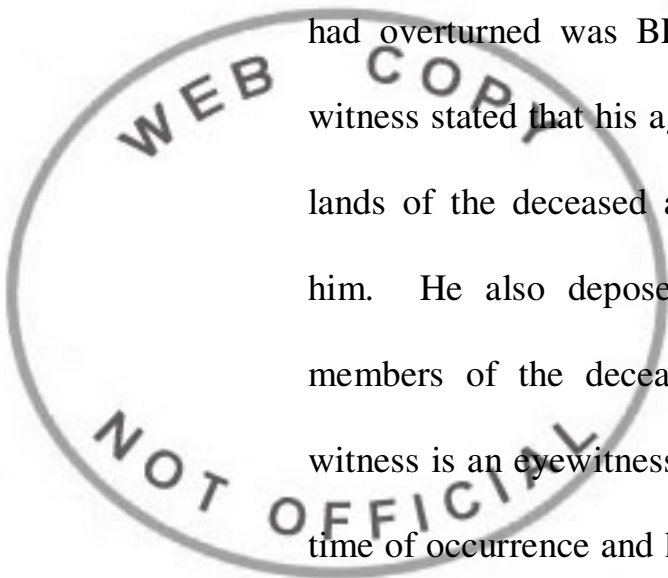
The Opposite parties before the Claims Tribunal denied their liability to pay the compensation of Rs.62,500/- with respect to the involvement of Bus No. 9255 in the accident and the quantum of compensation as claimed by the claimants were also challenged. But the learned Claims Tribunal, considering the position, that the Insurance Companies had already agreed before the Lok Adalalt to pay a settled compensation of Rs.1,25,000/- and that half of the amounts i.e., Rs.62,500/- had already been paid to the claimants and the remaining amount of Rs.62,500/- had only to be paid which was under dispute and for which dispute, the said C.W.J.C. had been filed wherein a de-novo trial had been ordered for deciding the dispute with regard to remaining compensation amount of Rs.62,500/-, did not change the quantum of compensation and fixed the same at Rs.1,25,000/- only and restricted its findings to the remaining compensation amount of Rs.62,500/-. The Claims Tribunal, finding that the Bus No.9255, owned by the appellant was involved in the accident and that he was equally liable to pay the half of the

compensation money and further finding that the Bus was not insured by the Respondent No.4, Oriental Insurance Company directed the appellant/owner to pay the remaining compensation amount of Rs.62,500/-. In coming to its conclusion in fixing the liability on the appellant/owner the Claims Tribunal considered the Photo copy of the Jimmanama dated 10.07.1994, according to which one Raghunath Mishra had received the bus after its seizure. Besides this the learned Claims Tribunal also mentioned that it perused the evident of witnesses but the evident was not discussed in the judgment.

Since the learned Claims Tribunal did not discuss its evidence in this judgment, it was felt necessary to go through the same and thus the evidence adduced by the witnesses was perused during hearing of this appeal.

A.W.1 deposed that deceased was aged about 22 years. He further deposed that on 4.05.1994, he was going on a motorcycle from his house to Katihar through Mahmar Chowk. He had stopped at the Chowk for drinking water. He heard noise there that a bus had overturned. Seeing this he went to the P.O. and saw a bus named Durga Travels had overturned in a ditch by the side of the road. He also stated

that one another Bus named Kumar Travels bearing No.BEK/9255 was standing there and some persons had surrounded it. He also deposed that he went to the bus which was overturned and saw that many persons inside the bus had received injuries and that the dead-body of deceased Dinesh Prasad Mandal was taken out of the Bus. He also deposed that while the people went to the overturned bus for taking out the bodies from inside it, another bus bearing No. BEK/9255, taking a chance sped away from there before the arrival of the police there. He also stated that the number of the bus which had overturned was BRK/4797. In cross-examination, this witness stated that his agricultural lands situate adjacent to the lands of the deceased and thus the deceased was known to him. He also deposed that he had informed the family members of the deceased about the accident. Thus, this witness is an eyewitness who was present near the P.O. at the time of occurrence and he says about the accident having seen it immediately after the accident and says that when he went there the bus in which the deceased was traveling had overturned and Bus No.BEK/9255 was also there but it sped away taking a chance. Learned counsel for the appellant



referred to the evidence of the witness in Para-26, where he says that he is not a witness in the police case. On the basis of this evidence it was argued that this witness is not a witness in the police case, hence, his evidence is not believable. But this submission is not acceptable in view of the fact that at the time of accident the witness was on his way to Katihar and that after seeing the accident he had gone away to the deceased's family to inform him and that it is not necessary that the police will make all persons as witnesses. The police would cite only those persons as witnesses who were available for examination.

A.W.2 is also an eyewitness, who says that he had gone to Katihar Chowk for purchasing rice at which time he heard some noise and he ran to the P.O. nearby and saw that Bus No.BRK/4797 named Durga Bus overturned in a ditch by the side of the road and another bus No.BEK/9255 named Kumar Bus was standing there on the road but taking a chance the bus sped away before the arrival of the police there. This witness further deposed that the dead body of the deceased Dinesh Mandal had been taken out of the overturned bus. He also deposed that the deceased was an agriculturist and

engaged in business of fruits and was earning yearly income of Rs.30,000/- to 35,000/-. This witness also deposed that after seeing the occurrence he was going to inform the deceased's father but in the way near Shishvanpur, he saw that deceased's father was coming towards the P.O. and thus he returned to the P.O. with deceased's father. There is nothing substantial in the cross-examination of this witness so as to discredit his testimony on any material point.

A.W.3 Minhajuddin, who also happens to be the informant of the police case lodged in connection with the accident states that he was traveling in Durga Bus and while the bus was at a distance of 200-250 yards from Mahiyarpur Chowk it dashed against one Kumar Bus and thereafter Durga Bus overturned into a ditch by the side of road. This witness deposed that in that accident he had received injuries. He also deposed that after receiving injuries he had become unconscious and he had regained his consciousness in hospital. In his cross-examination he has deposed that the bus in which he was traveling bore number as BRK4797.

Learned counsel for the appellant argued that this witness was traveling in the same bus but he does not name

the number of the bus namely, BEK/9255 as involved in the accident. But considering that aspect of his evidence that the witness was inside the bus and that after accident he had lost his conscious due to injuries, it is not expected that he will state the number of the another bus which was standing there outside and which had sped away taking a chance before arrival of the police.

A.W.4 Krishnadeo Mandal is the claimant himself. He deposed that while he was in the D.R.M. Office where he worked, Kailash Bihari Upadhiyay (A.W.1) had come to his house in railway colony and informed about the occurrence and then his family members informed and, thereafter, he came to the place of accident and saw that Bus No.BRK/4971 named Durga Bus had overturned and his brother, deceased had been killed, as a result of injuries inside the bus. He also deposed that he learnt there that Bus No.BEK/9255 named Kumar Bus, which was in the accident had sped away from there but he does not say the name of the persons who had told this.

Thus, in view of the evidence of A.W.1 & A.W.2, who were the eyewitnesses to the occurrence, there appears to

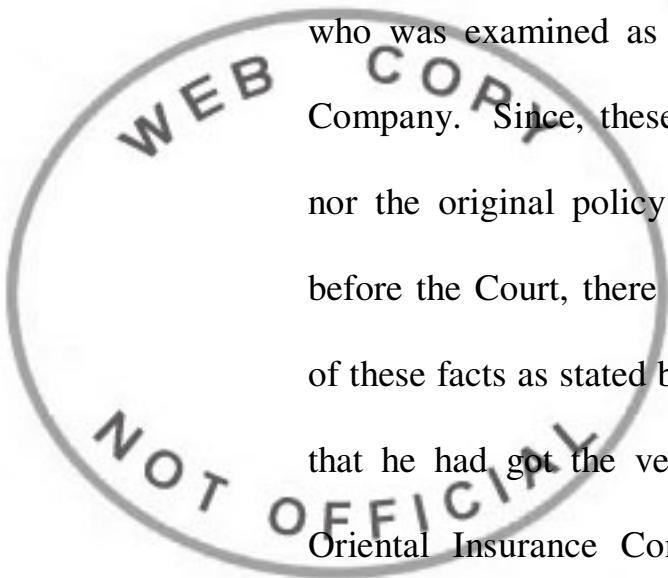
be the material to show that the Bus No.BEK/9255 owned by the appellant was involved in the accident.

In this case the opposite parties had also examined two witnesses before the Claims Tribunal. The O.P. 1 Nityanand Kumar was the owner/appellant himself. He deposed that Bus No.BEK/9255 was not plying on the road in which the place of accident lay and he also deposed that at the relevant time the bus was out of order and it was lying in his garage. But any paper showing a different route or that during that period the bus was out of order had not been produced.

He also stated that his bus was insured with the Oriental Insurance Company. He has also stated that his policy number was 31/94/945 and the premium of Rs.7477/- was paid vide money receipt No.240449 but any Insurance Policy was not brought on record nor the receipt was proved on the ground that the original papers were not available with him. However, he accepted his W.S. that he was the owner of Bus No.BEK/9255.

O.W.2 is the Officer of the Oriental Insurance Company who categorically deposed that the Bus BEK/9255 had not been insured by his company for the relevant time. He

also proved Ext-A which was a certificate, granted by Branch Manager, Oriental Insurance Company, Katihar mentioning that the Bus No.BEK/9255 had not been insured by his company during the relevant time. The appellant who is the owner of the Bus BeK/9255 and who examined himself as O.W.1 took the specific plea that he had got his bus insured by Oriental Insurance Company under Insurance Policy No.31/94/945 and that under money receipt No.240449 a premium of Rs.7477/- had also been deposited by him but these facts were not confronted to O.W.2 Awdhesh Kumar who was examined as an Officer of the Oriental Insurance Company. Since, these facts were not confronted to O.W.2 nor the original policy or the money receipt was produced before the Court, there remains no ground for the acceptance of these facts as stated by the appellant in support of his claim that he had got the vehicle No.BEK/9255 insured with the Oriental Insurance Company. Thus, there being sufficient material on record that the Bus No.BEK/9255 was involved in the accident and that there being no cogent material to establish about the insurance of the Bus No.BEK/9255 with the Oriental Insurance Company, the appellant, who was the



owner of the bus was rightly directed to pay the compensation of Rs.62, 500/- to the claimants. In such view of the matters, I find no ground to make any interference with the impugned award. In the result, this appeal is dismissed.

(C.M. Prasad, J.)

Mkr.

